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July 15, 2004

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Room TWB-204  
Washington, DC 20554

**Re: Notice of Ex Parte**

**Request to Update Default Compensation Rate for Dial-Around Calls from  
Payphones  
WC Docket No. 03-225**

Dear Secretary Dortch:

IDT Corporation ("IDT") submits this letter in response to the July 9, 2004 *ex parte* filing of SBC/Verizon.

There is one fact all parties to this proceeding agree upon: the increased use and reduced cost of wireless phones are reducing the number of calls made from payphones and, by extension, the number of payphones necessary to meet the public interest. Indeed, this argument has been made *repeatedly* by APCC in this proceeding. Who are the two largest wireless carriers? Verizon Wireless and SBC (through its Cingular joint venture). See, "America's Top Wireless Carriers," <http://tk.com/wireless/top10.html> (visited July 14, 2004). Thus, what this proceeding is and has always been about for Verizon and SBC is finding a way to subsidize their payphone divisions from the losses that are being incurred as a result of the success of their wireless divisions. Thus, the Commission should view this proceeding for what it is: a grab for cash and not policymaking that will positively impact the payphone industry.

Indeed, neither SBC/Verizon nor any party has introduced any evidence whatsoever demonstrating that an increased per-call surcharge will stop or even delay the trend of reduced payphone usage. SBC/Verizon simply use inflamed rhetoric as a scare tactic, as these companies are aware of the Commission's sensitivity to its responsibilities under Section 276 and its concern that any action it takes might be characterized as not "promot[ing] the widespread deployment of payphone services to the benefit of the

general public.” As difficult as it may be for the Commission to not reflexively accede to the demand of the payphone lobby, the Commission must balance Section 276 with its mandate to act in the public interest. In this proceeding, the public interest demands that if the default payphone surcharge is increased, prepaid phone card providers be given a reasonable time to deplete their stock, revise tariffs and service provider agreements and print new cards which reflect the increased rates the Commission imposes. Without adequate time to take these actions, calling card providers will lose millions of dollars through unrecovered payphone fees.

IDT is not alone in requesting a grace period. Other calling card providers, such as AT&T, MCI and Sprint have also requested that the Commission provide sufficient time before imposing a rate increase due to the severe financial harm that would result from an immediate implementation of the increase. Neither SBC nor Verizon, both of whom have prepaid calling card divisions, and thus have at least some insight into the timing issues raised by IDT and the others, have presented any evidence demonstrating that the timing needs presented by the IXC's are unreasonable. Instead, SBC/Verizon rely on APCC's incorrect claims that IXC's will simply raise payphone surcharges to recover additional costs. Yet IDT has already advised the Commission that IXC's limit rates “subject to change” to detariffed international rates or other detariffed rates or rates not specifically listed on calling cards or their packaging. State calling card disclosure requirements and consumer protection laws limit IXC's freedom to raise rates, such as the payphone surcharge, where the rate is listed on the card and/or its packaging.

SBC/Verizon also claim that the Commission should implement the requested 100% rate increase virtually overnight because IXC's have “been on notice for at least two years that an increase in the per-call rate was likely....” This is nonsense. The simple act of a party filing a petition can, in no way, place interested parties on notice that the petition is likely to be granted. Indeed, given the inherent weaknesses of the APCC and RBOC Coalition petitions, such as the inclusion of figures outside the scope of the Commission's previous methodology, the anti-competitive results of granting the petitions and the harms placed upon consumers if the petitions were granted, few IXC's thought the Commission would seriously consider the PSPs petitions, let alone actually grant them. Moreover, as IDT has demonstrated, PSPs have been granted considerable time to implement important consumer protections. For example, under 47 USC § 226, PSPs received 90 days to post disclosures on their phones. Additionally, under 47 CFR § 64.704, PSPs received six months from the regulations' effective date to allow consumers to use equal access codes to obtain access to the consumer's desired provider of operator services. The FCC should grant IXC's a grace period to implement revisions as well.

SBC/Verizon claim that IXC's have “built substantial increases in per-call charges into their rates.” Again, this is nonsense. SBC/Verizon both know that the economics of the calling card industry, wherein IXC's sell cards to distributors at discounts of up to 50% compel many IXC's to charge a payphone surcharge in excess of the default rate. Indeed, Verizon should be intimately familiar with this phenomenon, as its calling cards charge “up to 65 cents ... for each call completed from a pay phone.” (See Attachment 1) Verizon's charge is even more perverse when you consider that Verizon presumably

charges this same inflated amount when its calling card customer uses a Verizon calling card from a Verizon payphone. In such cases, Verizon is simply transferring money from one division to another.

Clearly, SBC/Verizon do not let the facts get in the way of a compelling argument. For example, SBC/Verizon state, “IDT’s concession that it would pose no logistical difficulty to implement the new per-call rate in the middle of a quarter ... strongly supports APCC’s call for the Commission to make the new rate effective immediately upon publication of the new rate in the Federal Register.” To call SBC/Verizon’s “interpretation” of IDT’s statement a gross mischaracterization is to be more generous to SBC/Verizon than they deserve. What IDT actually stated was, “IDT does not oppose implementation of a revised default dial-around rate in the middle of a calendar quarter, provided the requested transition period is granted.” Nowhere in IDT’s statement do we “concede” that implementing the new rate in the middle of a quarter does not present logistical difficulties. Indeed, it absolutely *does* present logistical difficulties, however, IDT was willing to accept responsibility for the difficulties if the Commission would grant the requested 12-month implementation schedule. So that there is no misunderstanding, if the Commission does not grant the requested transition period, then IDT would oppose implementation of a revised default dial-around rate in the middle of a calendar quarter.

Finally, SBC/Verizon unconvincingly dispute IDT’s argument that PSPs will be unfairly compensated if they receive per-call compensation that exceeds the cost of a local call. Despite their arguments in favor of administrative ease, the fact remains that the Commission defined “fair compensation” as “the amount to which a willing seller (*i.e.*, PSP) and a willing buyer (*i.e.*, customer, or IXC) would agree to pay for the completion of a payphone call” and has always viewed the reasonableness of the charge within this framework. For the first time, however, PSPs want to receive *more than* the amount a willing buyer would pay to make a call from some payphones. It is simply inconsistent with the definition of fair compensation to permit PSPs to receive dial-around compensation that is greater than the amount PSPs charge their own (coin) users. The Commission must limit calling card providers’ liability for completed calls from such phones to “the amount to which a willing seller and a willing buyer would agree to pay for the completion of a payphone call.”

IDT urges the Commission to very carefully scrutinize the APCC and RBOC Coalition's request for an increase in the default payphone compensation rate. Furthermore, if the Commission chooses to implement an increase, IDT respectfully requests that the Commission provide sufficient time – one year – to permit calling card service providers to make all necessary changes and deplete existing calling card stock before implementing the default dial-around increase.

Sincerely,

**/s/ Carl Wolf Billek**

Carl Wolf Billek

Attachment

cc: Chris Libertelli (via email)  
Daniel Gonzalez (via email)  
Matthew Brill (via email)  
Scott Bergmann (via email)  
Jessica Rosenworcel (via email)  
Jeffrey Carlisle (via email)  
Tamara Preiss (via email)  
Jon Stover (via email)  
Carol Canteen (via email)  
Sharon Diskin (via email)  
Joel Marcus (via email)